

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

DAPHNE ROLLINS,

Plaintiff,

vs.

**CHEROKEE INSURANCE
COMPANY,**

Defendant.

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CIVIL ACTION FILE

NO.: _____

DEFENDANT’S NOTICE OF REMOVAL

COMES NOW **CHEROKEE INSURANCE COMPANY**, purported Defendant (“Defendant”) in the above-styled civil action, appearing specially and without waiving, but specifically reserving all defenses arising from jurisdiction, service and process, and hereby removes Civil Action File No. 23A01560 from the State Court of DeKalb County to the United States District Court for the Northern District of Georgia, Atlanta Division, pursuant to Fed. R. Civ. P. 81(c) and 28 U.S.C. §§ 1332, 1441 and 1446, and as grounds for the removal state as follows:

STATEMENT OF THE CASE

1.

Defendant has been sued in a civil action brought in the State Court of DeKalb County, which is located within the Atlanta Division of the United States District Court for the Northern District of Georgia. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of all of the process, pleadings, orders and documents from the State Court Action have been attached as Defendant's Exhibit 1.

2.

The present matter is an action for damages for bodily injuries arising out of an April 9, 2021, motor vehicle accident involving Plaintiff Daphne Rollins and non-party Richard Moore¹. D-1, Complaint, ¶¶ 4-5. Plaintiff's only claim against Defendant Cherokee Insurance Company is for direct action. *Id.*, ¶¶ 32, 38.

3.

The Complaint was filed April 10, 2023, in the State Court of DeKalb County, Civil Action File No. 23A01560. *See* D-1, Complaint. To date, Cherokee Insurance Company has not been served with the Summons or Complaint.

¹ Plaintiff has sued Richard Moore and Foothills Brokerage, Inc., in a separate action that is pending in the United States District Court for the Northern District of Georgia – Atlanta Division, CAFN 1:23-cv-00788-SDG.

DIVERSITY JURISDICTION UNDER 28 U.S.C. § 1332(a)

4.

Plaintiff Daphne Rollins is a citizen of the State of Georgia. D-1, Complaint, ¶ 1. Defendant Cherokee Insurance Company is, and was at the time this lawsuit was filed, a corporation organized under the laws of the State of Michigan, with its principal place of business in the State of Michigan. Therefore, there is complete diversity of citizenship between the parties.

5.

Plaintiff contends that she “suffered serious personal injuries as well as mental and physical pain as a proximate result of the collision...” and that “[t]he treatment and lost wages of said injuries resulted in special damages in excess of \$337,264.95.” D-1, Complaint, ¶ 22.

6.

In determining whether the requisite \$75,000.00 amount in controversy has been established, jurisdiction “is proper if it is facially apparent from the complaint that the amount in controversy exceeds the jurisdictional requirement.” *Williams v. Best Buy Co., Inc.*, 269 F.3d 1319 (11th Cir. 2001). In the present case, as the claimed special damages alone are \$337,264.95, Defendant asserts that it is facially

apparent from Plaintiff's Complaint that the requisite \$75,000.00 amount in controversy requirement has been met. D-1, Complaint, ¶ 22.

**ALL PROCEDURAL REQUIREMENTS
FOR REMOVAL HAVE BEEN SATISFIED**

7.

Defendant Cherokee Insurance Company has not been served with the Summons or Complaint in this matter. Therefore, this Notice of Removal is filed within 30 days from the date that Defendant has been served with the Summons and Complaint. Removal is, therefore, timely in accordance with 28 U.S.C. § 1446(b).

CONCLUSION

By this Notice of Removal, Defendant Cherokee Insurance Company does not waive any objections it may have as to service, jurisdiction or venue, or any other defenses or objections they may have to this action. Defendant Cherokee Insurance Company intends no admission of fact, law, or liability by this Notice and expressly reserve all defenses, motions and/or pleas.

WHEREFORE, Defendant Cherokee Insurance Company prays that the case be removed to the United States District Court for the Northern District of Georgia, Atlanta Division.

This 3rd day of July, 2023.

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CERTIFICATE OF COMPLIANCE

Undersigned counsel certify the foregoing document has been prepared with one of the font and point selections (Times New Roman, 14 point) approved by the Court in Local Rule 5.1(C).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the undersigned has this day electronically filed the within and foregoing **DEFENDANT’S NOTICE OF REMOVAL** with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to the following:

Blade Thompson, Esq.
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Counsel for Plaintiff

This 3rd day of July, 2023.

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